

REMARKS

RESPONSE TO RESTRICTION REQUIREMENT

The Examiner has required restriction under 35 U.S.C. § 121 between the following inventions:

Group I. Claims 1-12 and 15-18, drawn to a gypsum board, classified in class 428, subclass 294.7; and

Group II. Claims 13-14, drawn to a process for manufacturing a gypsum board, classified in class 156, subclass 42.

In response to the restriction requirement, applicant elects, with traverse, the invention of Group I, claims 1-12 and 15-18 for further prosecution on the merits.

Reconsideration of this restriction requirement is respectfully requested. The Examiner has stated that the inventions, as grouped, are distinct because the inventions defined by Groups II and I, respectively, are related as process of making and product made. The Examiner has indicated that the inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product, or (2) that the product as claimed can be made by another and materially different process. (MPEP § 806.05(f)). The Examiner has stated that in this case “the process as claimed can be used to make other and materially different products”.

Applicants respectfully submit that the relationship between (i) the gypsum board, and (ii) the process for manufacturing the gypsum board, is an interdependent one, there being the same physical and structural concepts in the broad aspect of the invention.

It is well established that applicants should be allowed reasonable latitude in claiming their invention, provided they do not unduly multiply the claims, which is not the case here. Ex parte Seiback 151 U.S.P.Q. 62. It is submitted that the fields of

search involved in examining the claims as grouped would, as a practical matter, be essentially co-extensive and the best interests of the public would be served by having all of the claimed subject matter in the same application.

Accordingly, reconsideration of the restriction requirement is respectfully requested.

Double Patenting Rejection

Claims 1-12 and 15-18 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Applications Ser. No. 10/910,183, 10/983,870 or 10/910,113 in view of Fisher '607.

In order to expedite prosecution of this application, enclosed herewith is a Terminal Disclaimer in the form required by 37 CFR 1.321 (b). The Terminal Disclaimer includes a statement by the assignee specifying that the evidentiary documents have been reviewed and certifying that, to the best of the assignee's knowledge and belief, title is in the assignee seeking to take action. As such, the Terminal Disclaimer is submitted to be in compliance with 37 CFR 3.73 (b), and is in the proper form required by 37 CFR 1.321. In view of the same, it is submitted that claims 1-12 and 15-18 should not be subject to rejection based on obviousness-type double patenting with any patent issuing from U. S. Patent Applications Ser. No. 10/910,183, 10/983,870 or 10/910,113 in view of Fisher '607.

Accordingly, reconsideration of the rejection of present claims 1-12 and 15-18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Applications Ser. No. 10/910,183, 10/983,870 or 10/910,113 in view of Fisher '607 is respectfully requested.

CONCLUSION

In view of the elections taken herein, the Terminal Disclaimer submitted herewith and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration of the restriction requirement and allowance of claims 1-18 are earnestly solicited.

Respectfully submitted,
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